

REESE LLP
George V. Granade (State Bar No. 316050)
8484 Wilshire Boulevard, Suite 515
Los Angeles, California 90211
Telephone: (310) 393-0070
ggranade@reesellp.com

REESE LLP
Michael R. Reese (State Bar No. 206773)
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
mreese@reesellp.com

THE LAW OFFICE OF ALEC PRESSLY
Alec Pressly (State Bar No. 348054)
3110 Main Street Building C, #331
Santa Monica, California 90405
Telephone: (603) 809-6601
alec@presslylegal.com

*Counsel for Plaintiff Emmett Enriques
and the Proposed Class*

BRAUNHAGEY & BORDEN LLP
David Kwasniewski (State Bar No. 281985)
747 Front Street, 4th Floor
San Francisco, California 94111
Telephone: (415) 964-4460
kwasniewski@braunhagey.com

*Counsel for Defendants Only What You
Need, Inc., and The Simply Good Foods Co.*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EMMETT ENRIQUES, *individually and on behalf of all others similarly situated.*

Plaintiff.

v.

ONLY WHAT YOU NEED, INC., a
Delaware Corporation; THE SIMPLY
GOOD FOODS COMPANY, a
Delaware Corporation; and DOES 1
through 70, inclusive,

Defendants.

Case No. 2:24-cv-08969-GW-BFM

**JOINT REPORT PURSUANT TO
FEDERAL CIVIL PROCEDURE
RULE 26(f) AND CENTRAL
DISTRICT OF CALIFORNIA
LOCAL RULE 26-1**

1 Plaintiff Emmett Enriques (“Plaintiff”) and Defendants Only What You Need,
2 Inc., and The Simply Good Foods Company (together, “Defendants”), the parties to
3 the above-captioned action (collectively, the “Parties”), through their undersigned
4 counsel, respectfully submit the following joint report following the meet and confer
5 they held pursuant to Federal Civil Procedure Rule 26(f) and Central District of
6 California Local Rule 26-1 on November 20, 2024.

7 **I. PRELIMINARY STATEMENTS**

8 ***A. Plaintiff’s Preliminary Statement***

9 This is a consumer protection class action alleging on behalf of a putative
10 California class that Defendants violated California’s Consumers Legal Remedies
11 Act, CAL. CIV. CODE § 1750 *et seq.*, False Advertising Law, CAL. BUS. & PROF.
12 CODE § 17500 *et seq.*, and Unfair Competition Law, CAL. BUS. & PROF. CODE
13 § 17200 *et seq.*, and alleging on behalf of a putative nationwide class that Defendants
14 breached express and implied warranties, made negligent misrepresentations, and
15 were unjustly enriched. Plaintiff seeks injunctive relief, restitution, damages,
16 punitive damages, prejudgment interest, and attorneys’ fees and costs.

17 Plaintiff alleges Defendants materially misrepresent the macronutrient levels
18 in their “Elite PRO” brand of ready-to-drink protein shakes (the “Products,” as
19 defined in paragraph 1 of the Complaint). Plaintiff’s allegations are based on, at
20 minimum, sixteen laboratory reports performed on sixteen different lots of six
21 different flavors of the Products. These tests were conducted over a 25-month period,
22 from March 2022 through April 2024. The scope and breadth of these reports
23 demonstrate that the allegations below are systemic to the composition and
24 production of all of the Products.

25 Specifically, Plaintiff alleges that:

26 (1) The Products contain materially less protein than Defendants disclose to
27 consumers on the Products’ Nutrition Facts panels (“NFP”) and represent to
28 consumers using prominent content claims and statements on the Products’ labels.

(2) The Products contain materially more total carbohydrates than Defendants disclose on the Products' NFPs.

(3) Many flavors contain material amounts of sugar, even though Defendants represent that the Products contain “zero sugar.”

(4) Defendants prominently market the Products as “0 Net Carbs” yet fail to define that term as required by legal precedent.

(5) Assuming Defendants internally define “Net Carbs” to mean total carbohydrates minus dietary fiber, then the Products contain materially more “Net Carbs” than Defendants disclose on the Products’ NFPs and represent prominently on the Products’ labels.

B. Defendants' Preliminary Statement

This is a putative false advertising case. OWYN sells a variety of plant-based, allergen-free, ready-to-drink protein shakes. The shakes state the amount of protein they contain on the front of the label. Plaintiff, who was recruited rather than injured, alleges that years ago some of OWYN's shakes did not contain the amount of protein advertised. Plaintiff does not allege that any of the shakes he actually purchased contained less protein than advertised. Plaintiff's lawyers own alleged testing confirms that, at least at or around the time of Plaintiff's alleged purchases, OWYN's shakes contained at least as much, if not more, protein as was stated on the labels. The parties have agreed to proceed with plaintiff's deposition on December 18, 2024.

II. RULE 26(f)(3)(A) - What changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made

Plaintiff served his initial disclosures on December 4, 2024. Defendants will serve their initial disclosures on December 11, 2024.

1 **III. RULE 26(f)(3)(B) - The subjects on which discovery may be needed, when
2 discovery should be completed, and whether discovery should be
3 conducted in phases or be limited to or focused on particular issues**

4 ***A. What Discovery Is Needed***

5 *Plaintiff's Position:* Discovery will be needed on Defendants' communications and documents related to the formulation, labeling, and marketing of Defendants' Products, specifically focusing on accuracy and transparency in nutritional information; internal testing results, product development records, and quality control documentation related to the Products; consumer complaints, feedback, or communications with Defendants regarding alleged mislabeling or misrepresentations in product marketing; and financial documents, including sales data and profit margins related to the Products, to support claims for damages and restitution.

14 *Defendants' Position:* Defendants anticipate that discovery will be needed on all of Plaintiff's claims, all subjects and issues fairly arising out of the allegations in the complaint, all of the affirmative allegations of the defense, Plaintiff's purchasing decisions, any testing Plaintiff performed on the accused protein shakes, whether Plaintiff was injured as opposed to recruited by his lawyers, and Plaintiff's alleged damages, including claims for recovery of attorney fees.

20 ***B. Discovery Schedule***

21 *Plaintiff's Position:* Plaintiff believes the initial focus of discovery should be on issues related to class certification. Plaintiff proposes the following discovery schedule:

<u>EVENT</u>	<u>DATE FOR COMPLETION</u>
Completion of Class Certification Discovery	June 20, 2025
Plaintiff's Disclosure of Class Certification	June 20, 2025
Expert(s)	

1	Defendants' Disclosure of Class Certification	August 20, 2025
2	Opposition Expert(s)	
3	Plaintiff's Disclosure of Class Certification of	September 22, 2025
4	Rebuttal or Reply Expert(s)	
5	Completion of All Factual Discovery and	90 days after the Court issues
6	Disclosure of any Additional Experts or Expert	its ruling on Plaintiff's motion
7	Reports	for class certification

8
9 *Defendants' Position:* Because merits and class certification issues are
10 inherently intertwined, and because the claims and defenses in this case are
11 straightforward, Defendant submits that discovery should not be phased or
12 bifurcated and instead proposes the following schedule:

<u>EVENT</u>	<u>DATE FOR COMPLETION</u>
Completion of Fact Discovery	June 20, 2025
Plaintiff's Disclosure of Class Certification Expert(s)	June 20, 2025
Defendants' Disclosure of Class Certification Opposition Expert(s)	August 20, 2025
Plaintiff's Disclosure of Class Certification of Rebuttal or Reply Expert(s)	September 22, 2025

21
22 **IV. RULE 26(f)(3)(C) - Any issues about disclosure, discovery, or**
23 **preservation of electronically stored information, including the form or**
24 **forms in which it should be produced**

25 The Parties do not foresee any issues regarding discovery or the preservation
26 of electronically stored information.

1 **V. RULE 26(f)(3)(D) - Any issues about claims of privilege or of protection**
2 **as trial-preparation materials, including—if the parties agree on a**
3 **procedure to assert these claims after production—whether to ask the**
4 **court to include their agreement in an order under Federal Rule of**
5 **Evidence 502**

6 The Parties do not anticipate any issues regarding claims of privilege or
7 protection of trial-preparation materials. The Parties will submit a proposed
8 confidentiality order soon for the Court's consideration that will cover these topics.

9 **VI. RULE 26(f)(3)(E) - What changes should be made in the limitations on**
10 **discovery imposed under these rules or by local rule, and what other**
11 **limitations should be imposed**

12 The Parties do not believe that any changes should be made.

13 **VII. RULE 26(f)(3)(F) - Any other orders that the court should issue under**
14 **Rule 26(c) or under Rule 16(b) and (c)**

15 The Parties agree that the Court should issue an order governing the treatment
16 of confidential information produced in discovery, a proposed version of which the
17 Parties will submit soon.

18 **VIII. LOCAL RULE 26-1(a) - Complex Cases**

19 The Parties agree that the case is complex solely due to the fact it is a proposed
20 class action. The Parties also agree that the Manual for Complex Litigation should
21 not be used in this action.

22 **IX. LOCAL RULE 26-1(b) - Motion Schedule**

23 Plaintiff will file a motion for class certification. The Parties have met and
24 conferred and propose the following schedule for class certification briefing:

25 June 20, 2025 – Plaintiff's opening brief in support of class certification

26 August 20, 2025 – Defendants' opposition

27 September 22, 2025 – Plaintiff's reply

28 The Parties also anticipate filing motions for summary judgment after the

1 completion of discovery.

2 **X. LOCAL RULE 26-1(c) - ADR**

3 The Parties agree to ADR Procedure 2 (appearing before a neutral selected
4 from the Court's mediation panel) or ADR Procedure 3 (private mediation). The
5 Parties do not believe ADR Procedure 1 (appearing before the District Court judge
6 or magistrate assigned to the case) is appropriate here.

7 **XI. LOCAL RULE 26-1(d) - Trial Estimate**

8 Plaintiff estimates the case will take two weeks to try.

9 Defendant estimates the case will take three days to try if Plaintiff's class
10 certification motion is denied. If Plaintiff's class certification motion is granted,
11 Defendant estimates the case will take three weeks to try.

12 **XII. LOCAL RULE 26-1(e) - Additional Parties**

13 Neither Party anticipates adding additional parties, except that Plaintiff may
14 add additional plaintiffs.

15 **XIII. LOCAL RULE 26-1(f) - Expert Witnesses**

16 The Parties' proposals regarding the timing of expert witness disclosures are
17 set forth above in Section III.B in connection with discovery scheduling.

19 Respectfully submitted,

20 Date: December 10, 2024

REESE LLP

21 By: /s/ George V. Granade
22 George V. Granade (SBN 316050)
23 8484 Wilshire Boulevard, Suite 515
24 Los Angeles, California 90211
25 Telephone: (310) 393-0070
26 ggranade@reesellp.com

27
28 **REESE LLP**
29 Michael R. Reese (SBN 206773)
30 100 West 93rd Street, 16th Floor
31 New York, New York 10025
32 Telephone: (212) 643-0500
33 mreese@reesellp.com

1 **THE LAW OFFICE OF ALEC
2 PRESSLY**

3 Alec Pressly (SBN 348054)
4 3110 Main Street Building C, #331
Santa Monica, California 90405
Telephone: (603) 809-6601
alec@presslylegal.com

5 *Counsel for Plaintiff Emmett Enriques
6 and the Proposed Class*

7 Date: December 10, 2024

BRAUNHAGEY & BORDEN LLP

8 By: /s/ David Kwasniewski
9 David Kwasniewski (SBN 281985)
10 747 Front Street, 4th Floor
San Francisco, California 94111
Telephone: (415) 964-4460
kwasniewski@braunhagey.com

11 *Counsel for Defendants Only What You
12 Need, Inc., and The Simply Good Foods
13 Co.*

14 **ATTESTATION**

15 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, George V. Granade, hereby attest
16 that all signatories listed, and on whose behalf this filing is submitted, have
17 concurred in the filing's content and have authorized the filing.

18
19 By: /s/ George V. Granade
20 George V. Granade